IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.A. No. 26 of 2007
DATE OF DECISION: 16.8.2007

Commissioner of Central Excise, Ludhiana

…Appellant

Versus

M/s Sigma Steel Tubes and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE A.N. JINDAL

Present: Mrs. Daya Chaudhary,
Assistant Solicitor General of India,
for the appellant-revenue.

M.M. KUMAR, J.

This order shall dispose of C.E.A. Nos. 26 and 27 of 2007, which have been filed under Section 35G of the Central Excise Act, 1944 (for brevity, 'the Act'), challenging order dated 21.7.2006, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal'). Facts are being referred from C.E.A. No. 26 of 2007.

The assessee M/s Sigma Steel Tubes is engaged in manufacturing of steel tubes. The Central Excise Prevention staff detected a shortage of 19.673 MT of steel tubes involving duty of Rs. 87,496/-. One of the partner Shri Sita Ram Garg admitted the

shortage and debited the above said Central Excise duty. Accordingly, a show cause notice under Section 11A of the Act was issued for confirmation of duty along with imposition of penalty. The Adjudicating Authority vide order dated 30.11.2005, confirmed the demand of Rs. 87,496/-, imposed a penalty of Rs. 87,496/- on respondent No. 1 and a penalty of Rs. 10,000/- on respondent No. 2. They filed an appeal before the Commissioner (Appeals), who vide his order in appeal, dated 23.2.2006 (P-2), set aside the penalty imposed on respondent Nos. 1 and 2 by holding that it was not a case of clandestine removal of goods and there was no corroborative evidence to prove the same. The Commissioner (Appeals) consequently set aside the order to the extent it imposed interest and penalty but it confirmed the amount of duty imposed by the order. It further held that once penalty was imposed on the firm-respondent No. 1, there was no occasion for the Adjudicating Authority to impose penalty on the partner.

The revenue approached the Tribunal. The Tribunal also dismissed the appeal affirming the view taken by the Commissioner (Appeals). It further held that no substantial question of law was involved.

Mrs. Daya Chaudhary, learned counsel for the revenue has argued that the Tribunal has committed grave error of law by concluding that once the duty has been paid by the assessee then no show cause notice could have been issued under Section 11A read with Section 11AC of the Act. According to learned counsel the aforementioned view has not been supported by a Division Bench

judgment of this Court in the case of **Commissioner of Central Excise Delhi-III v. M/s Machino Montell (I) Ltd. and another (C.E.A. No. 13 of 2005, decided on 25.7.2006)**.

We have thoughtfully considered the submission made by the learned counsel and have also perused the order in original, order in appeal and the order passed by the Tribunal. We do not feel persuaded to accept the contention raised because firstly the Commissioner (Appeals) in his order dated 23.2.2006 (P-2) has recorded a finding that it was not a case of clandestine removal of items. It also referred to a judgment of Hon'ble the Supreme Court in the case of **Rashtriya Ispat Nigam Ltd. v. Commissioner, 2004 (163) E.L.T. A53**. The view of the Commissioner (Appeals) reads as under:-

> " I have carefully examined the case records including the Appellants submissions made in writing and at the time of personal hearing and observe that the Appellant have already paid duty before issue of Show Cause Notice, no interest and penalty is imposable as held by Tribunal in the case of Rashtriya Ispat Nigam Ltd., Vs CCE 2003 (161) ELT 285 (Tri) and upheld by Supreme Court reported as 2004 (163) ELT A.53. The Larger Bench of CESTAT has also followed the said decision in the case of CCE Vs Machino Montell (P) Ltd., 2004 (62) RLT – 709. Moreover no Show Cause Notice is required under section 11A (2B) in as much as the shortage of the finished goods may be due to wrong

accounts and clerical mistakes also and it cannot be a case of clandestine removal unless proved by the corroborative evidences. Order-in-Original imposing the interest and penalty is, therefore, set aside and amount of duty deposited is confirmed. Moreover, when penalty is imposed on the company no penalty is imposable on the Partner."

We are further of the view that Hon'ble the Supreme Court in the case of Rashtriya Ispat Nigam Ltd. (supra) has dismissed the appeal of the revenue by upholding the order of the Appellate Tribunal accepting the proposition that no penalty was imposable under Section 11AC of the Act as well as under Rule 173Q of the erstwhile Central Excise Rules, 1944, once the duty is deposited before issuance of show cause notice. On the basis of the aforementioned findings as well as clear position of law, we are of the view that no substantive question of law warranting admission of these appeals would arise.

In view of the above, these appeals fail and the same are accordingly dismissed.

(M.M. KUMAR)
JUDGE

(A.N. JINDAL)
JUDGE

August 16, 2007
Pkapoor